



17 April 2012: For immediate release

**OUTCOME OF A HIGH-LEVEL MEETING BETWEEN COMPETITION COMMISSION
AND THE LAW SOCIETY OF SOUTH AFRICA REGARDING AN EXEMPTION
APPLICATION DECISION BY THE COMPETITION COMMISSION**

The Competition Commission (“Commission”) and council members of the Law Society of South Africa (“LSSA”) met on 2 April 2012 to discuss the implications of the Commission’s refusal to grant the LSSA an exemption for the professional Rules of the statutory provincial law societies. Both parties agreed and committed themselves – as far as possible – to resolving all matters concerning the professional Rules governing the attorneys’ profession in a manner that will ensure the continued professionalism and integrity of the profession while addressing competition law concerns raised by the Commission.

The parties acknowledged that some confusion might have arisen from the Commission’s decision regarding the application of the existing professional Rules and wish to clarify the position to both the legal profession and the general public. It is important to appreciate that while the Commission has decided that certain Rules that restrict competition have not been exempted; such Rules cannot be dispensed with without promulgating new ones, as this will create an untenable vacuum. In addition, change in the Rules requires a change in legislation as the Rules emanate from the Attorneys Act. In view of the above, the parties have agreed that until the ongoing process of finalising the new Legal Practice Bill has been concluded, the existing Rules will be interpreted and applied in a manner that is not offensive to competition law. In this respect the parties have agreed the said Rules will be applied as follows:

- **Professional fees**

The existing Rules apply, provided that all minimum tariffs will not be enforced. In other words attorneys may charge fees below the minimum tariffs where these are prescribed.

- **Touting**

The existing Rules will apply, except that any restriction on advertising that conforms with the general advertising standards in that it is truthful and not misleading to the public are lifted.

- **Reserved work and multidisciplinary practices**

The Commission's decision will not affect the *status quo* pending the promulgation of the new Rules.

The LSSA will cooperate with the Commission in addressing any matters concerning competition issues between now and the promulgation of the new Legal Practice Bill. In the event of doubt as to whether any conduct offends the competition law principles, the LSSA has agreed that the provincial law societies will consult the Commission on such cases.

In addition, both parties will work closely with the Department of Justice and Constitutional Development to ensure that a permanent resolution on these matters is found expeditiously.

ISSUED ON BEHALF OF THE CO-CHAIRPERSONS OF THE LAW SOCIETY OF SOUTH AFRICA, KRISH GOVENDER AND JAN STEMMETT, AND THE COMMISSIONER OF THE COMPETITION COMMISSION, SHAN RAMBURUTH

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Editor's note:

Background to the Law Society application for exemption to the Competition Commission:

On 4 March 2011, the Competition Commission of South Africa (Commission) gazetted a notice rejecting the application of the Law Society of South Africa (LSSA) for exemption from the provisions of Chapter 2 of the Competition Act, 1998 (the Act). In 2004, the LSSA sought an exemption from the Act in respect of the disciplinary rules of the four provincial statutory law societies relating to

- professional fees,
- reserved work,
- organisational forms and multidisciplinary practises, and
- advertising, marketing and touting.

Since the gazetting of the notice, the LSSA and the Commission agreed to enter into a process of engagement and consultation to resolve the Commission's concerns and to facilitate the continued regulation of the attorney's profession in the interim.

The LSSA and the Commission have met to discuss the reasons behind the rejection of the exemption application and also ways in which the provincial law societies could adapt their rules and practices so as to comply with the Act. The impending Legal Practice Bill will also require the adoption of new rules by the relevant regulatory authority for lawyers. The Commission has been referred to various amendments which are already contemplated in the draft uniform rules presently under discussion by the various law societies.

In October 2011, the LSSA furnished comprehensive written submissions to the Commission, supported by extensive research.

About the LSSA:

The Law Society of South Africa brings together its six constituent members – the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces, the Black Lawyers Association and the National Association of Democratic Lawyers – in representing South Africa's 20 700 attorneys and 5 000 candidate attorneys.